

## **REMARKS**

Claims 1-22 (renumbered) were pending in the application. By this paper, new claims 23 and 24 have been added for consideration, claims 18 (second occurrence)-21 have been renumbered as claims 19-22, claims 1, 3, 7, 9-11, 15, and 17-22 have been amended, and claims 12, 13, and 16 have been canceled without prejudice.

As a result, claims 1-11, 1, 15, and 17-24 are now pending. Reconsideration and withdrawal of the various objections and rejections are hereby respectfully solicited in view of the foregoing amendments and the following remarks.

### **Claim Objections**

Claims 18 (second occurrence)-21 have been renumbered as claims 19-22. Two claims 18 were inadvertently misnumbered as filed. The applicants thank the examiner for noting this error. These claims have been amended herein to reflect the correct numbering and dependency of the claims.

Claims 15 and 16 have been rejected for including the term "the vibrating part," which was alleged to lack antecedent basis. The phrase did in fact include proper antecedent basis in original claim 10. However, claims 10 and 15 have been amended to eliminate this term and claim 16 has been canceled, rendering the rejection moot. This rejection should be withdrawn.

### **Claim Rejections - 35 U.S.C. §103**

Claims 1-9, 18, and 19 have been rejected under 35 U.S.C. 103(a) as obvious over Tompkins, U.S. Patent No. 2,425,655 (Tompkins) in view of Taylor, U.S. Patent No. 5,611,771 (Taylor). The rejection should be withdrawn in view of the following remarks.

Claims 1, 3, and 7 have been amended herein, though not narrowed, in order to clarify operation of the vibrating device both while operating and when operation is completed. These amendments were not made to overcome any rejection, but merely for clarity and precision of language. Independent claim 1 recites a mattress with, among other things, a vibrating device that has "a motor that when operating vibrates the part of the support structure and that gradually slows at a controlled rate to a complete stop over a period of time when operation is complete."

Tompkins discloses a mattress with an internal vibrating feature. Taylor discloses a headset used for applying a facial massage. The official action alleges that it would have been obvious to combine the teachings of Taylor with those of Tompkins to achieve the vibrating mattress as recited in claim 1. However, the applicants believe this to be incorrect.

A proper *prima facie* case of obviousness based on a combination of references requires that: the references in combination teach all of the limitations of the rejected claims; there be a reasonable expectation of success in making the combination; and there be a suggestion or motivation *found within the prior art teachings* to make the combination. At the very least, there is no motivation or suggestion to modify the Tompkins mattress according to the Headset massager of Taylor.

First, a prior art reference must be viewed as a whole. It is well known that to pick and choose elements from a prior art reference without taking into account the overall teachings of the reference is improper. The action has essentially taken only the motor circuitry from the headset massager as taught by Taylor and combined only the circuitry with the teachings of Tompkins. This is exactly what is prohibited.

Taylor as a whole teaches a *headset* for mounting on a user's head. The headset can then be operated to apply a massage to the user's face. One having ordinary skill in the art of mattresses and mattress vibration devices would not find a suggestion or motivation within either of Tompkins or Taylor to make the claimed combination, as purported in the action. Nor would such a combination achieve a vibrating mattress as recited in claim 1. If one were to modify the mattress of Tompkins according to the headset of Taylor, one would achieve a vibrating mattress having a facial massage headset feature as part of the mattress, wherein only the facial massager might include a slow down feature. It is improper to look only to the facial massage program of the headset in Taylor and apply only that feature to the teachings of Tompkins without looking at the teachings of Taylor as a whole.

Further, there is no suggestion or motivation within either of the references that would lead one of ordinary skill in the art to alter the vibrating motor for a *full body* mattress, as disclosed in Tompkins, according to the vibration characteristics of a *head-only* massager as disclosed in Taylor. A mattress as recited in claim 1 would not be achieved by such a combination.

For these reasons, the rejection of independent claim 1 and corresponding dependent claims 2-9 is improper and should be withdrawn. Claims 1-9 are believed to be in condition for allowance.

Independent claim 18 recites "a self contained vibrating device having an exterior housing received in but slidably removable from a part of the mattress with a part of the vibrating device coupled with part of the support structure for vibrating the mattress." Claim 18, as amended, also recites that "the vibrating device when operating vibrates the part of the support structure and gradually slows at a controlled rate to a complete stop over a period of time when operation is complete." Claim 18 recites essentially the same motor operation as discussed above with respect to claim 1. As noted above with respect to claim 1, such a mattress feature is not disclosed or suggested in the combination of Tompkins and Taylor. Therefore, claim 18 and dependent claim 19 are allowable for at least this reason.

Further, neither Taylor nor Tompkins discloses a self contained vibrating device as recited in claim 18. The combination of Tompkins and Taylor fails to disclose or suggest all of the limitations of independent claim 18. For this additional reason, claims 18 and 19 are in condition for allowance. The rejection as to these claims should also be withdrawn.

Claims 10-12 have been rejected as obvious over Jessup, U.S. Patent No. 2,852,021 (Jessup). The rejection should be withdrawn in view of the foregoing amendments and the following remarks.

Allowable claim 13 and intervening claim 12 have been canceled herein without prejudice. The limitations of these canceled claims have essentially been added to independent claim 10. Claim 10 as amended recites a vibrating device including a plurality of components, "a motor housing substantially encompassing the plurality of components, and a sleeve mounted internal to part of the mattress and coupled with an element of the support structure, the motor housing removably received within the sleeve and arranged to transmit vibrations through the sleeve for vibrating the mattress, the sleeve being water resistant." Jessup fails to teach or suggest such a mattress structure. As a result, claims 10 and 11 are believed to be in condition for allowance. Claim 12 has been canceled rendering and its rejection moot.

Claims 14-16 have been rejected as obvious over Jessup in view of Tompkins. The rejection should be withdrawn in view of the foregoing amendments and the following remarks.

Claims 14 and 15 depend from now allowable claim 10. Neither Tompkins nor Jessup teaches or suggests all of the limitations of claim 10, nor does a combination of Jessup and Tompkins. Dependent claims 14 and 15 are believed to be in condition for allowance. The rejection of these claims should be withdrawn. The rejection of canceled claim 16 is rendered moot.

#### **Allowable Subject Matter**

The applicants gratefully acknowledge that claims 13, 17, and 20-22 are considered allowable. The limitations of claim 13 and intervening claim 12, as noted above, have been essentially added to claim 10 rendering claims 10, 11, 14, and 15 allowable. Claim 17 has been amended herein to correspond with the previous noted amendments to its base claims 15 and 10 and, thus, should remain allowable.

Claims 20 and 22 depend from claim 18 and have not been amended or rewritten herein, other than to renumber them, in view of the above comments regarding base claim 18. These claims remain in condition for allowance.

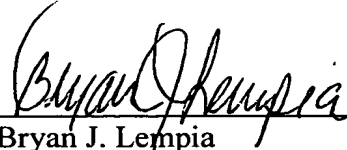
#### **CONCLUSION**

Claims 1-11, 14, 15, and 17-24 are in condition for allowance in view of the foregoing amendments and remarks. Reconsideration and withdrawal of the various objections and rejections are hereby respectfully solicited.

The examiner is invited to contact the undersigned at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

No fee is believed due at this time. However, the Commissioner is hereby authorized to charge any fee deficiency, or to credit any overpayments, to Deposit Account No. 13-2855 of the undersigned's firm.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bryan J. Lempia", is written over a horizontal line.

Bryan J. Lempia

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